BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/PRO-12 of 2017

Date of Hearing : 28.11.2017
Date of Order : 15.03.2018

In the Matters of
Petition under section 86(1)(B) of Electricity Act for approval of source of Power – Pragati Power-III Bawana.

Petitioner
Haryana Power Purchase Centre, Panchkula

Present On behalf of the Petitioner
1. Shri O.K. Sharma, CE, HPPC.
2. Shri Ravi Juneja, AEE, HPPC.
3. Shri Vikrant Saini, AEE, HPPC.
4. Shri Tajinder Singh, Project Officer.

Quorum
Shri Jagjeet Singh, Chairman
Shri M.S. Puri, Member
Shri Debashish Majumdar, Member

ORDER

Brief Background of the Case

1. HPPC has filed the present petition under section 86(1)(b) of the Electricity Act, 2003 seeking approval for procurement of power/scheduling of power from Pragati Power Station under Long Term PPA. The submission of the petitioner is stated herein.

   a) That 1371 MW Combined Cycle Pragati Power Station is a Mega Power Project of Govt. of Delhi, the beneficiaries of which are Delhi, Haryana and Punjab. In the beginning, the plant was proposed to be installed to meet out growing need of Delhi State only. However, on the request of the then Hon’ble Chief Minister, Haryana vide D.O. Letter no. CMH-2007/ISB-341
dated 07th June 2007 then Hon’ble Chief Minister of Delhi vide D.O. letter no. Spl. Secy. CM/07/1419 dt. 21.06.2007 consented to allocate 10% share each for Haryana and Punjab on long term basis and PPA dt. 23.06.2009 was signed between HPPC, DHBVNL, UHBVNL and PPCL for allocation of 10% share of the power to State of Haryana.

b) That due to long-term allocation of power to the States of Haryana and Punjab, the overall capacity of the plant was increased. The increased plant capacity resulted in the project falling under Mega Project category and the project was granted mega project status by the Govt. of India which resulted in substantial savings in custom duties hence reduced cost of project. The reduced cost of the project resulted in lowest capacity charges in its category.

c) However, due to non-availability of cheaper domestic gas for full capacity generation from the plant, the balance gas is being arranged as spot R-LNG which results in increased energy charges and overall tariff of the station.

d) That during the suo-motu petition no. HERC/PRO-36 of 2015 taken up by the Commission for examination of PPAs not stand approved by the Commission under section 86(1)(b) of the Electricity Act, HPPC submitted as under:

“7(c) with respect to Pragati Gas Power Station (hereinafter referred to as “Pragati GPS” for the sake of brevity), it was submitted that the power purchase agreement dated 23.06.2009 has been already submitted to the commission for approval vide memo no. Ch-60/HPPC/SE/C&R/PPA-6/Vol-1 dated 15.09.2014, in response to the directions from this Commission given vide order dated 21.07.2017 in HERC/PRO-12 of 2014 (suo-motu). Haryana is having share of 137.1 MW in this project”.

e) That the Commission, vide its Order dated 31.03.2016, had directed as under:

“1. (d) Regarding Power Purchase Agreement with Pragati Gas Power Project, the Commission observes that PPA for this project has never been submitted for approval of the Commission at any time before the matter
was taken up by the Commission vide the present Suo-motu proceedings and the PPA has been submitted for approval to the Commission only now after commencement of present suo-motu proceedings. It has been informed by HPPC that as the availability is declared by this project with RLNG, which is costlier, the power from this project is sparingly scheduled and most of the time during the peak load hours only. It has further been submitted that a proposal has already been sent to the Government of Delhi for surrendering power from this project for at least two years and the decision of Government of Delhi is awaited.

Commission observes that this proposal of surrendering power from this project for next two years needs to be pursued vigorously by HPPC and they should inform the Commission about the final outcome in this matter within three months of this Order. The Commission will take a final view regarding approval of PPA of this project thereafter.”

f) That the Pragati Power Station is having ISGS station (Inter State Generating Station with more than one beneficiaries State as producer) owned by Govt. of Delhi and the share of 10% was allocated on the request of Govt. of Haryana.

The long term PPA signed between HPPC and PPCL has no provision of pre-mature termination of contract and exit clause. However, Haryana has already raised the issue of surrendering of power and allocation to the needy state through DO Letters dated 02.11.2015 & 20.10.2015 by ACS/Power & MD/UHBVNKL, respectively. However, PPCL, vide letter dated 03.11.2015, intimated that PPA doesn’t have such clause for early termination and such request cannot be accepted.

g) That keeping in view of the contractual obligations, Haryana is bound to pay the fixed charges and schedule the energy on merit as per the demand scenario. However, the Commission has not approved the project as source of procurement of power, in its ARR Order dated 01.08.2016. HPPC further submitted that as the contract is bilateral, the disallowance of source had created the ambiguity about the charges to be paid. However, HPPC
submitted that it is presently paying the fixed charges to avoid late payment surcharge.

h) That the matter was deliberated again in review filed by the Discom's against ARR order. However, commission has not accepted the same and directed DISCOMs to file a separate petition in the matter.

i) In view of the above, the present petition has been filed under section 86(1)(b) for approval of Source. Further, Pragati Power has already been considered in the projected project availability scenario and the same will not change by way of increase in additional availability.

Proceedings in the Case
2. The case was first heard by the Commission on 02.06.2017. Shri U.K. Agarwal, S.E. along with Shri Ravi Juneja, AEE presented the case on behalf of the HPPC/Discoms. They submitted that HPPC is bound by the contract to procure power and pay fixed cost to M/s. Pragati Power. Therefore, the contract cannot be terminated before the term of the PPA. HPPC submitted the Ministry of Power, Government of India reply on the issue of surrender of power as incorporated in the Hon'ble CERC Order dated 18.04.2017, in the Petition no. 223/MP/2015 in the matter of Petition relating to dispute between the parties involving termination of PPA's due to high average power purchase cost of NTPC, NHPC and THDC plants, seeking surrender of power allocation from the stations and requesting issuance of statutory advise to Ministry of Power recommending surrender, reallocation of the Petitioner’s share from these PPAs in the interest of the consumers of Petitioner’s share from these PPA’s in the interest of the consumers of Petitioner’s licensed area of supply in NCT of Delhi.

Ministry of Power, Government of India has replied vide affidavit dated 08.01.2016 to the Hon’ble CERC that “the claims made by the Petitioner in the above petition for enforcement of the termination of the Power Purchase Agreements entered into on long term basis on the ground that the power supplied from the generating stations is costlier ought not to be entertained. However, the determination of tariff terms and conditions including the issue of delay in the completion of the projects, consequent interest during construction etc. are to be allowed, are matters entirely within the domain and jurisdiction of
In order to examine whether the Power Purchase Agreement was entered into with the approval of the Commission or not, the Commission sought certain additional information from HPPC. The additional information sought by the Commission and HPPC’s reply dated 02.08.2017 is briefly stated below:

a) Copy of the approval from the Commission, regarding PPA.

HPPC’s reply:

PPA was entered into on 23.06.2009 and the Commission was apprised of the said source as part of ARRs. Copies of relevant ARR Orders for FY 2011-12 to FY 2015-16 wherein the Commission had allowed the scheduling from the said project are placed at F/A.

b) Date of first purchase of power from this project.

HPPC’s reply:

27.12.2011

c) Quantum, rate and duration during which power from this project is being procured, currently.

HPPC’s reply:

The power procured from Pragati Power in May 2017 is 189.53250 MUs. The variable cost of Pragati Power in May 2017 is Rs. 2.187 per unit.

d) Amount of fixed cost paid and power drawn for the project, during the FY 2015-16 and FY 2016-17.

HPPC’s reply:

Total amount of fixed charges paid during FY 2015-16 is Rs. 82.26 crore and for FY 2016-17 is Rs. 102.93 crore. The power drawn/purchased by Haryana from Pragati Power during FY 2015-16 is 19.0976 crore units and during FY 2016-17 is 18.4187 crore units.

HPPC further submitted that it has incurred a loss of Rs. 40 crore on account of scheduling costly power in placed of Pragati Power from Nov., 2016 to May, 2017. The loss may further increase during the peak paddy season i.e. from Mid...
June onwards to August. Therefore, in view of the cost effectiveness of the project, it has been requested to approve the source under long term.

5. The Commission, vide its letter no. 1960/HERC/Tariff dated 01.09.2017, observed that the Commission has not yet received the opinion sought on the legal status of the PPAs signed without approval of the Commission. Further, the Commission, considering the additional submission of HPPC dated 02.08.2017, allowed HPPC/DISCOMs to schedule power from Pragati Power, as an interim measure, till the time the case is disposed of by the Commission.

6. The case was next heard on 28.11.2017, wherein HPPC reiterated their earlier submissions and further backed it by the opinion dated 10.07.2017 of Shri M.G. Ramachandran, Senior Advocate. Shri M.G. Ramachandran has opined that PPA entered into by HPPC with Pragati Power has deemed assent of the Commission, since the power procurement from the said station had been approved by the State Commission in the various tariff orders of the Haryana Discoms, until 01.08.2016 (ARR for FY 2016-17).

It has been further submitted that in a similar case filed by the Delhi Distribution Companies before the Central Commission, seeking the unilateral surrender or termination of the long term PPAs already entered into with NTPC, the Central Commission was pleased to pass the Order dated 31.03.2017 and 18.04.2017 refusing to terminate the PPA as the same was outside the scope of its jurisdiction and falls within the domain of the Central Government (NTPC being a Central Government owned Company). The Distribution Companies were, however, granted liberty to approach the Central Government with its grievances.

Commission’s Analysis & Order

7. The Commission has examined the petition filed by the HPPC as well as their replies/written submission and additional information provided from time to time. The Commission has taken serious note of the fact that HPPC has signed PPA on 23.06.2009 for procuring power from Pragati Power, without the approval of the Commission, in contravention of the relevant clauses of the License conditions and Electricity Act, 2003. However, the Commission is constrained to note that power procurement from Pragati Power has been constantly been approved by the Commission in its ARR Orders, until the Order dated
01.08.2016, for the FY 2016-17, when the Commission during the suo-moto proceedings in case no. PRO-12 of 2014/PRO-36 of 2015 noticed that HPPC is procuring the power from ibid source without getting the PPA approved from the Commission. The Commission observed that in view of the above, the requirement of approval of the Commission for procurement of power mentioned under section 86(1)(b) of the Electricity Act, 2003, was got clandestinely satisfied. The Commission has also taken cognizance of the fact that it was a policy decision on the part of Governments of Haryana and Delhi to have an arrangement for procurement of power by the Haryana DISCOMs from Pragati Power. More so, Haryana DISCOMs cannot unilaterally terminate the PPA, particularly when the PPA does not have an early exit clause.

The Commission has considered the additional submissions of HPPC regarding the loss being suffered on account of scheduling costly power in place of Pragati Power.

Taking the above into consideration, the Commission grants ex-post facto approval to the PPA signed by HPPC with Pragati Power on 23.06.2009. However, the Commission directs the Distribution Licensees to ensure that all power procurement is done strictly as per PPA’s approved by the Commission. It may be noted that Licensees cannot enter into any contractual obligation with any Generator or sign any MOU / PPA without prior approval of the Commission. In case of any such occurrence, the cost of such power shall not form part of the approved power purchase cost of the Distribution Licensees.

This Order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 15th March, 2018.

Date: 15.03.2018  (Debashish Majumdar)  (M.S. Puri)  (Jagjeet Singh)
Place: Panchkula  Member  Member  Chairman